

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA

Jerome Finnigan,)	Civil Action No. 5:15-3515-BHH
)	
Plaintiff,)	
)	
vs.)	ORDER AND OPINION
)	
United States of America,)	
)	
Defendant.)	

Plaintiff Jerome Finnigan (“Plaintiff”), proceeding *pro se*, brought this action pursuant to 28 U.S.C. § 1346 and 28 U.S.C. §§ 2671-2680 (Federal Torts Claims Act). (ECF No. 1.) In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B), D.S.C., this matter was referred to United States Magistrate Judge Kaymani D. West for pre-trial handling and a Report and Recommendation (“Report”).

This matter is before the Court on Defendant’s Motion to Dismiss or, in the alternative, for Summary Judgment (ECF No. 46). On August 5, 2016, Magistrate Judge West issued a Report recommending that Defendant’s Motion, which she construed as a Motion for Summary Judgment because she considered matters outside the pleadings, be granted. (ECF No. 58.) The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. (ECF No. 58 at 20.) Plaintiff filed no objections and the time for doing so expired on August 22, 2016.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court may accept, reject, or modify, in whole or in part, the Report or may recommit

the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

After a careful review of the record, the applicable law, and the Report, the Court finds the Magistrate Judge’s recommendation to be proper and to evince no clear error. Accordingly, the Court adopts the recommendation and incorporates the Report herein by specific reference. Defendant’s Motion to Dismiss, or in the alternative, for Summary Judgment (ECF No. 46) is GRANTED; the Court has no subject-matter jurisdiction to consider Count II of the Amended Complaint, and as such it is DISMISSED *without prejudice* for failure to exhaust (see ECF No. 58 at 8); the remainder of Plaintiff’s action is DISMISSED *with prejudice*.

IT IS SO ORDERED.

/s/Bruce Howe Hendricks
United States District Judge

October 4, 2016
Greenville, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified that any right to appeal this Order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure.